

# 38

## Filing Refund Claims, and Amended Returns

File a refund claim on Form 1040X if you want to take advantage of a retroactive change in the law or if you have overpaid your tax because you failed to take allowable deductions or credits, or overstated your income. See the sample Form 1040X at the end of this chapter.

*File a refund claim on time.* The time limits discussed at ¶38.1 must be strictly observed; otherwise, even if you file a valid refund claim, it will be denied because of late filing.

Before filing a refund claim for a prior year, carefully review the return of that year for accuracy. A refund claim may subject the return to an examination in which the IRS may find errors that reduce or completely eliminate the refund claim, or may even lead to the assessment of a deficiency.

*Income tax overwithholding.* You do not have to file a refund claim if you have overpaid your tax due to excessive withholding of taxes on your wages or salary, or if you have overestimated your estimated tax. You get a refund on these overpayments by filing your tax return and requesting a refund for these amounts. You may not recover an overpayment of estimated tax until you file your final return.

*Earned income credit.* If you are entitled to a refund due to the earned income credit for certain low-income working families, you must file your tax return to get your refund, even though your income and filing status would not otherwise require that a return be filed. See Chapter 25.

File your claim with the IRS Service Center for the area where you live as shown in the instructions to Form 1040X, unless you file for a quick refund on Form 1045.

For a refund of an overpayment of FICA taxes, see ¶26.10 for how to claim a refund on your tax return. If you are not required to file a tax return, you file a refund claim on Form 843.

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## ¶38.1 When To File a Refund Claim

You may file a refund claim within three years from the time your return was filed, or within two years from the time you paid your tax, whichever is later. A return filed before its due date is treated as having been filed on the due date.

A refund claim based on a bad debt or worthless securities may be made within seven years of the due date of the return for the year in which the debt or security became worthless.

The time for filing refund claims based on carrybacks of net operating losses or general business credits is within three years of the due date (including extensions) of the return for the year the loss or credit arose.

A refund claim based on your share of a joint return refund withheld by the IRS to pay your spouse's debts (¶38.2) may be made within six years of the date you received the IRS notice that the refund had been withheld.

If you filed an agreement giving the IRS an extended period of time in which to assess a tax against you, you are allowed an additional period in which to file a claim for refund. The claim, up to certain amounts, may be filed through the extension period and for six months afterwards.



### Time Limits Must Be Observed

Failure to file a timely refund claim is fatal, regardless of its merits. Even if you expect that your claim will have to be pursued in court, you must still file a timely refund claim. Mailing a return so that it is postmarked by the due date (including extensions) qualifies as a timely filing provided you use the U.S. Postal Service. After July 30, 1996, the timely mailing rule also applies to postmarks made by private mail or delivery services that are designated by the IRS.

**Armed Forces service members and veterans.** In determining the time limits within which a refund claim may be filed, you disregard intervening periods of service in a combat zone or hazardous duty area, plus periods of continuous hospitalization outside the United States as a result of combat zone injury, and the next 180 days thereafter. You may also disregard a postponement period if you were missing in action; see Chapter 35. Service members and civilian government employees who were taxed on pay while in "missing" status also have additional time to file refund claims.

## ¶38.2 Joint Refund Claims

If a joint return was filed for a year in which a refund is due, both spouses are entitled to recover jointly and both must file a joint refund claim. Where separate returns were filed, each spouse is a separate taxpayer and may not file a claim to recover a refund based

on the other spouse's return, except if that spouse becomes the fiduciary when one spouse becomes incompetent or dies. If you are divorced and incur a net operating loss or credit that may be carried back to a year in which you were married, you may file a refund claim with your signature alone and the refund check will be made out only to you; see ¶40.17.

**Refund withheld to pay spouse's debts.** If you showed a refund due on a joint return filed with a spouse who owed child support or federal student loans, the IRS may have withheld payment of the refund to cover the obligations. If you are not liable for the past-due payments, and your tax payments (withholdings or estimated tax installments) exceed your income reported on the joint return, you may file Form 8379 to get back your share of the refund.

## ¶38.3 Stating the Reasons for Refund Claims

The most important part of a refund claim is a statement of the "reasons" for the refund. A general claim simply noting an overpayment, without supporting facts and grounds, is not sufficient. If a claim is denied by the IRS, it may become the basis of a court suit. If you have not stated all the grounds, you may not be allowed to argue them in court. You must make a full claim showing all the:

- Facts that support the claim. Attach all supporting documents and tax forms supporting your claim.
- Grounds for the claim. If you are uncertain about the exact legal grounds, alternate and even inconsistent grounds may be given. For example: "The loss was incurred from an embezzlement; if not, from a bad debt." To protect against understating the amount of the claim, you might preface the claim with this phrase: "The following or such greater amounts, as may be legally refunded."

## ¶38.4 Quick Refund Claims

Form 1045 may be used for filing refunds due to carrybacks from net operating losses, and the general business credit. Form 1045 also may be used for a quick refund based on a repayment exceeding \$3,000 of income reported in an earlier year. Form 1045 must be filed within 12 months after the loss year. The IRS must act on the claim within 90 days. Payment of quick refund claims is not a final settlement of your return; the IRS may still audit and then disallow the refund claim. Note that the filing of a quick refund, if rejected, may not be the basis of a suit for refund; a regular refund claim must be filed.

**Tax-shelter claims.** If you file a quick refund claim on Form 1045 and the IRS determines it is likely that you claimed excessive tax-shelter benefits, the IRS will offset the quick refund claim by a deficiency attributable to the tax-shelter items. You will receive the balance and receive a notice of the tax-shelter deficiency.

## ¶38.5 Interest Paid on Refunds

If you file for 1996 on or before the April 15, 1997, filing deadline, interest is not paid by the IRS on refunds made within 45 days of the April 15 due date. For example, you file your 1996 return on April 1, 1997, claiming an overpayment due to overwithholding on your wages. Interest does not have to be paid on refunds before May 31, which is 46 days after April 15, the day the tax was due. A return filed before its due date is treated as having been filed on the due date. If the overpayment is not refunded within 45 days, interest is paid from the date the tax was overpaid up to a date determined by the IRS that can be as much as 30 days before the date of the refund check.

If you get a filing extension or otherwise file after the due date of the return (without regard to extensions of time), no interest is paid if the refund is made within 45 days after the date you filed.

**Refund claims.** Interest on a refund claim filed on Form 1040X within the time limits of ¶38.1 is paid from the date of overpayment to the date the claim was filed if the IRS pays the refund within 45 days. If the refund is not made within the 45-day period, interest is paid from the date of overpayment to a date set by the IRS that is not more than 30 days before the date of the refund check.

The IRS does not have to pay interest on overpayments resulting from net operating loss carrybacks, or business credit carrybacks if a refund is paid within 45 days of the filing of the refund claim.

If a refund claim based on a loss or credit carryback is filed and subsequently a quick refund claim is filed on Form 1045 for the same refund, the 45-day period starts to run on the date Form 1045 is filed.

Interest rates applied to overpayments are as follows:

| <i>Amounts outstanding<br/>between—</i> | <i>Rate is—</i> |
|---|-----------------|
| 1/1/92 — 3/31/92                        | 8%              |
| 4/1/92 — 9/30/92                        | 7               |
| 10/1/92 — 6/30/94                       | 6               |
| 7/1/94 — 9/30/94                        | 7               |
| 10/1/94 — 3/31/95                       | 8               |
| 4/1/95 — 6/30/95                        | 9               |
| 7/1/95 — 3/31/96                        | 8               |
| 4/1/96 — 6/30/96                        | 7               |
| 7/1/96 — 9/30/96                        | 8               |

## ¶38.6 Refunds Withheld by IRS

The IRS may withhold all or part of your refund if you owe child support or federal debts such as student loans. If you file a joint return with a spouse who owes child support or federal debts, you may be able to obtain your share of a refund due on the joint return; for further details, see ¶38.2.

**Tax-shelter claims.** The IRS may withhold refunds based on questionable tax-shelter claims. In each IRS Service Center, returns of tax-shelter investors are screened to determine if the tax shelter has fraudulently misrepresented tax benefits or grossly overvalued assets or services. If the tax shelter is considered to be abusive and if claimed deductions or tax credits are disallowed, refunds attributable to the tax-shelter items will not be paid. The balance of your refund claim will be paid.

A refund will also be frozen under the rules just discussed if you file your return after receiving a pre-filing notification letter from the IRS warning you not to claim certain tax-shelter writeoffs.

The rules apply to original tax returns showing a refund due as well as to refund claims. Quick refund claims made on Form 1045 that are attributable to abusive tax-shelter items may also be offset by a deficiency; see ¶38.4.

## ¶38.7 Amended Returns Showing Additional Tax

If, after filing your 1996 return, you find that you did not report some income or claimed excessive deductions, you should file an amended return on Form 1040X to limit interest charges and possible tax penalties.

If you filed early and then file an amended return by the filing due date (including any extensions) that shows additional tax due, you will not be charged interest or penalties based on the original return; the amended return is considered a substitute for the original.

You must pay the additional tax due as shown on Form 1040X. Even if you expect a refund on your original return, the IRS will not reduce the refund check to cover the additional tax. You must pay it and you will receive the original refund separately.

Form 1041-100 (2004)

**Part I** **Exemptions.** See Form 1041, Form 1041A, or Form 1041-C for instructions.

If you are not claiming your exemption, do not complete this part. If claiming more exemptions, complete lines 24-30, and if applicable, line 31, showing lower exemptions, complete lines 31-35.

|    |   |                |   |  |  |  |  |
|----|---|----------------|---|--|--|--|--|
| 24 | Married and spouse  |                |   |  |  |  |  |
| 25 | Caution: If your partner or someone else can claim you as a dependent even if they must not be, you cannot claim an exemption for yourself.             |                |   |  |  |  |  |
| 26 | Your dependent children who lived with you.   |                |   |  |  |  |  |
| 27 | Your dependent children who did not live with you also to children of dependent.  |                |   |  |  |  |  |
| 28 | Other dependents.   |                |   |  |  |  |  |
| 29 | Total number of exemptions. Add lines 24 through 27.  |                |   |  |  |  |  |
| 30 | Multiply the number of exemptions claimed on line 29 by the amount listed below for the tax year you are claiming. Enter the result here and on line 4. |                |   |  |  |  |  |
|    | <b>Tax Exemption</b>  | <b>Amount.</b> | <b>Enter the information if the amount on line 1 is over:</b> |  |  |  |  |
|    | 100   | \$1,100        | \$6,450   |  |  |  |  |
|    | 101   | \$1,150        | \$6,475   |  |  |  |  |
|    | 102   | \$1,150        | \$6,725   |  |  |  |  |
|    | 103   | \$1,300        | \$6,825   |  |  |  |  |

29 **Exemptions (children and other) not claimed on original return.**  
**Amount if claiming for 1995 return, do not complete column (b) above.**

| 29 | Amount | Enter the information if the amount on line 1 is over: | 29 |
|----|--------|--|----|
|    |        |  |    |

31 **If you check box on line 29, do not file this part. It is covered by your dependent's later 2004-2005 agreement. Check here if:**

| 31 | Amount | Enter the information if the amount on line 1 is over: | 31 |
|----|--------|--|----|
|    |        |  |    |

**Part II Explanation of Changes to Income, Deductions, and Credits.**  
Enter the two number line pairs. For each line you are changing and give the reason for each change. Attach all supporting forms and schedules for items changed. If you don't, your Form 1041-C may be returned. Be sure to indicate your name and social security number on any attachments.

If the change relates to a net operating loss carryback or a general business credit carryback, attach the schedule or form that shows the year in which the loss or credit occurred. See instructions. Also, check here: ☐

**Line 2:** When filing my original 1994 return I did not realize that I  
qualified for head of household status. I was married at the end  
of 1994 and my daughter lived with me for the entire year. I was  
the sole provider of my daughter's support during 1994. On line 2  
I am claiming the \$1,100 standard deduction allowed to a head of  
household for 1994.

**Line 6:** The corrected 1994 tax, taken from the 1994 Tax Table, filing  
status of head of household rather than single.

**Part III Presidential Election Campaign Fund.** Checkmark below will not increase your tax or reduce your refund.  
If you did not previously want to have \$3 go to the fund but now want to, check here. ☐  
If you did not previously want to have \$3 go to the fund but now want to, check here. ☐